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Attorneys for Plaintiff and Counter-defendant  
TRIA BEAUTY, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

\_\_\_\_\_  
TRIA BEAUTY, INC., Plaintiff

v.

RADIANCY, INC., Defendant,

\_\_\_\_\_  
RADIANCY, INC., Counter-claimant

v.

TRIA BEAUTY, INC., Counter-defendant,

and

\_\_\_\_\_  
KIMBERLY KARDASHIAN, Counter-  
defendant

Case No. 10-cv-05030-RS (NJV)

**DECLARATION OF MARIEL GOETZ IN  
SUPPORT OF TRIA'S OPPOSITION TO  
RADIANCY'S SECOND MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

**(EXHIBITS 6, 9-11, 13-24 & 36-94 UNDER  
SEAL)**

**PUBLIC VERSION**

1 I, Mariel Goetz, hereby declare and state as follows:

2 1. I am an associate in the law firm of Ropes & Gray LLP, counsel of record for  
3 TRIA Beauty, Inc. (“TRIA”) in this litigation. I submit this declaration in support of TRIA’s  
4 Opposition to Radiancy Inc.’s (“Radiancy”) Second Motion for Partial Summary Judgment.

5 2. A disc containing the following five exhibits is being manually filed with the  
6 Court: Radiancy’s two full-length infomercials, the first which began airing in February 2010  
7 (Exhibit 1) and the second, a modified version, which began airing approximately in mid-2011  
8 (Exhibit 2); and the three shortened versions of those infomercials used in Dr. Itamar  
9 Simonson’s consumer survey (Exhibit 3, “Green” version, the shortened original infomercial;  
10 Exhibit 4, “Lilac” version, the shortened modified infomercial; and Exhibit 5, “Orange” version,  
11 a shortened third version used as a “control”).

12 3. Ropes & Gray engaged Dr. Brian S. Biesman to render his professional opinion  
13 of the safety and effectiveness of the no!no! Hair device sold by Radiancy and to evaluate the  
14 performance of that device relative to claims made about the device in advertising by Radiancy.  
15 Attached as Exhibit 6 is a true and correct copy of the Expert Report of Dr. Biesman, served on  
16 March 13, 2012 (*filed under seal*).

17 4. Attached as Exhibit 7 is a true and correct copy of Radiancy’s complaint against  
18 TRIA, filed in New York State Court on 01/06/2011.

19 5. Attached as Exhibit 8 is a true and correct copy of a Radiancy advertisement for  
20 the no!no! Hair from the April 29, 2012 issue of Parade Magazine (p. 20).

21 6. Attached as Exhibit 9 are true and correct excerpts from the transcript of the  
22 January 25, 2012 deposition of Dolev Rafaeli, Radiancy’s CEO, including pages 164:4-21;  
23 167:3-168:8; 175:19-176:5; 177:9-22; 208:17-21; 233:2-234:16; 249:8-251:5 (*filed under seal*).

24 7. Attached as Exhibit 10 are true and correct excerpts from the transcript of the  
25 February 16, 2012 deposition of Sharon Dovev, Radiancy’s Director of Marketing, including  
26 pages 39:1-20; 42:6-44:4; 46:11-48:3; 55:14-56:11; 71:24-72:14; 88:12-89:16; 98:9-99:11;  
27 108:24-110:25; 115:25-118:24; 123:17-126:22; 140:1-141:3; 174:11-175:19; 179:16-180:12  
28 (*filed under seal*).

8. Attached as Exhibit 11 are true and correct excerpts from the transcript of the March 14, 2012 30(b)(6) deposition of Radiancy, Inc., represented by CEO Dolev Rafaeli, including pages 97:22-98:5 (*filed under seal*).

9. Attached as Exhibit 12 is a true and correct copy of Exhibit 10 from Dolev Rafaeli's deposition on 01/25/2012, a printout from [www.my-no-no.com/technology-thermicon.asp](http://www.my-no-no.com/technology-thermicon.asp).

10. Attached are true and correct copies of documents produced by Radiancy in this litigation that are among those documents cited in the March 30 Expert Report of Krista Holt (*all filed under seal*):

Exhibit No.	Bates No.	Description
[13]	RAD0000135 ("Confidential Attorneys' Eyes Only")	No!no! hair advertisement [REDACTED]
[14]	RAD0000315 ("Confidential Attorneys' Eyes Only")	No!no! hair advertisement [REDACTED]
[15]	RAD0001464 ("Confidential Attorneys' Eyes Only")	Medical Insight Report, November 2009
[16]	RAD0007108 ("Confidential Attorneys' Eyes Only")	Email dated 09/28/08, from Skip Borghese, to HSN employees, [REDACTED]
[17]	RAD0007884 ("Confidential Attorneys' Eyes Only")	Power point [REDACTED]
[18]	RAD0010820 ("Confidential Attorneys' Eyes Only")	Email dated 10/15/10, from Dolev Rafaeli to Samantha Kohl and Joel Iverson.
[19]	RAD0019260 ("Confidential Attorneys' Eyes Only")	No!no! hair advertisement [REDACTED]
[20]	RAD0037229 ("Confidential Attorneys' Eyes Only")	No!no! hair advertisement [REDACTED]

Exhibit No.	Bates No.	Description
[21]	RAD0129438 ("Confidential Attorneys' Eyes Only")	Medical Insight Report, August 2011
[22]	RAD0188469 ("Confidential Attorneys' Eyes Only")	Email dated 05/23/2011 from Sharon Dovev to Dolev Rafaeli and other Radiancy employees.
[23]	RAD0206253 ("Confidential Attorneys' Eyes Only")	Radiancy financial information
[24]	RAD0206254 ("Confidential Attorneys' Eyes Only")	Radiancy financial information (Breakdown Expenses)

11. On 5/23/12, I accessed an ebay forum site by going to <http://forums.ebay.com/db2/topic/Health-Beauty/Tria-Or-Nono/5200018087>, and printed a copy of the webpage found at that link. A true and correct copy of this printed webpage is attached as Exhibit 25.

12. On 5/23/12, I accessed an online forum by going to <http://www.shespeaks.com/discussTopicDetails/70142/239219>, and printed a copy of the webpage found at that link. A true and correct copy of this printed webpage is attached as Exhibit 26.

13. On 5/23/12, I accessed a QVC community site by going to <http://community.qvc.com/forums/Beauty-Banter/topic/277620/no-no-or-tria.aspx>, and printed a copy of the webpage found at that link. A true and correct copy of this printed webpage is attached as Exhibit 27.

14. On 5/23/12, I accessed a Yahoo! Answers forum by going to <http://answers.yahoo.com/question/index?qid=20120229211753AAV0cIP>, and printed a copy of the webpage found at that link. A true and correct copy of this printed webpage is attached as Exhibit 28.

15. On 5/23/12, I accessed a Yahoo! Answers forum by going to <http://answers.yahoo.com/question/index?qid=20120101020425AA6tK9R>, and printed a copy

1 of the webpage found at that link. A true and correct copy of this printed webpage is attached as  
2 Exhibit 29.

3 16. On 5/23/12, I accessed an online forum site by going to  
4 [http://www.latina.com/beauty/be-beautiful-videos/reader-beauty-question-week-which-hair-](http://www.latina.com/beauty/be-beautiful-videos/reader-beauty-question-week-which-hair-removal-laser-works-best)  
5 [removal-laser-works-best](http://www.latina.com/beauty/be-beautiful-videos/reader-beauty-question-week-which-hair-removal-laser-works-best), and printed a copy of the webpage found at that link. A true and  
6 correct copy of this printed webpage is attached as Exhibit 30.

7 17. On 5/23/12, I accessed a hair removal forum site by going to  
8 [http://www.hairremovalforum.com/laser-hair-removal-research/tria-vs-nono-laser-hair-](http://www.hairremovalforum.com/laser-hair-removal-research/tria-vs-nono-laser-hair-removal/219/)  
9 [removal/219/](http://www.hairremovalforum.com/laser-hair-removal-research/tria-vs-nono-laser-hair-removal/219/), and printed a copy of the webpage found at that link. A true and correct copy of  
10 this printed webpage is attached as Exhibit 31.

11 18. On 5/23/12, I accessed a Facebook forum by going to  
12 [http://www.facebook.com/notes/no-no-hair-review-does-no-no-hair-really-work-yes/no-no-hair-](http://www.facebook.com/notes/no-no-hair-review-does-no-no-hair-really-work-yes/no-no-hair-removal-face-reviews-laser-hair-removal-machines/396951693649479)  
13 [removal-face-reviews-laser-hair-removal-machines/396951693649479](http://www.facebook.com/notes/no-no-hair-review-does-no-no-hair-really-work-yes/no-no-hair-removal-face-reviews-laser-hair-removal-machines/396951693649479), and printed a copy of  
14 the webpage found at that link. A true and correct copy of this printed webpage is attached as  
15 Exhibit 32.

16 19. On 5/23/12, I accessed an online forum by going to  
17 <http://www.ecotarget.com/beauty/skin-care/tria-vs-the-nono-hair-removal>, and printed a copy of  
18 the webpage found at that link. A true and correct copy of this printed webpage is attached as  
19 Exhibit 33.

20 20. On 5/23/12, I accessed an online forum by going to  
21 [http://www.shannonstonehairbiz.com/2012/04/29/the-best-unwanted-hair-solutions-for-men-](http://www.shannonstonehairbiz.com/2012/04/29/the-best-unwanted-hair-solutions-for-men-and-women-these-days/)  
22 [and-women-these-days/](http://www.shannonstonehairbiz.com/2012/04/29/the-best-unwanted-hair-solutions-for-men-and-women-these-days/), and printed a copy of the webpage found at that link. A true and  
23 correct copy of this printed webpage is attached as Exhibit 34.

24 21. On 7/02/11, I accessed Radiancy's no!no! hair website by going to  
25 <https://www.my-no-no.com/nono-about.asp>, and printed a copy of the webpage found at that  
26 link. A true and correct copy of this printed webpage is attached as Exhibit 35.

27 22. Attached are true and correct copies of the following documents produced in  
28 discovery in this litigation (*all filed under seal*):

Exhibit No.	Bates No.	Description
[36]	RAD0172225 ("Confidential Attorneys' Eyes Only")	Email dated 09/12/2006, from Dolev Rafaeli to Eddie Mishan, [REDACTED]
[37]	RAD0049398 ("Confidential Attorneys' Eyes Only")	Email dated 8/15/2007, from Dolev Rafaeli to Jessica Stacey at Sephora [REDACTED]
[38]	RAD0048149 ("Confidential Attorneys' Eyes Only")	Email dated 06/11/2005, from Fabian Tenenbaum, former Radiancy Vice President, to Dan Almagor, former Radiancy CEO, and others. [REDACTED]
[39]	RAD0048165 RAD0048166 ("Confidential Attorneys' Eyes Only")	Email dated 07/18/2005, which includes an email dated 07/15/2005, from Hans Bocker (at Braun/Gillette) to Fabian Tenenbaum. [REDACTED]
[40]	RAD0048187 ("Confidential Attorneys' Eyes Only")	Email dated 03/15/06, from Dolev Rafaeli to Frederick De La Torre at Reckitt Benckiser [REDACTED]
[41]	RAD0051224 ("Confidential Attorneys' Eyes Only")	Email dated 12/24/2009, from Jon Schulberg to Dolev Rafaeli and Sharon Dovev [REDACTED]
[42]	RAD0010092 ("Confidential Attorneys' Eyes Only")	Email dated 02/11/2010, from Sharon Dovev to Jon Schulberg and Dolev Rafaeli [REDACTED]
[43]	RAD0093502 RAD0093503 ("Confidential Attorneys' Eyes Only")	Email dated 11/17/10, from Sharon Dovev to herself, [REDACTED]
[44]	RAD0129607 ("Confidential Attorneys' Eyes Only")	Email dated 02/03/2010, which includes an email from Craig Drill to Dolev Rafaeli. [REDACTED]
[45]	RAD0080891 ("Confidential Attorneys' Eyes Only")	Email dated 08/31/2009, which includes an email dated 08/27/2009, from Dolev Rafaeli to Radiancy's PR team. [REDACTED]

Exhibit No.	Bates No.	Description
[46]	RAD0129269 ("Confidential Attorneys' Eyes Only")	Email dated 06/28/11, from Dolev Rafaeli to Vikki Jochim-Ruisch, which includes an email from Jochim-Ruisch, also dated 06/28/11, [REDACTED]
[47]	RAD0001584 ("Confidential Attorneys' Eyes Only")	[REDACTED]
[48]	RAD0001363 ("Confidential Attorneys' Eyes Only")	[REDACTED]
[49]	RAD0116139 ("Confidential Attorneys' Eyes Only")	Emails dated 06/01/2005, between Fabian Tenenbaum and former CEO Dan [Almagor] [REDACTED]
[50]	RAD0116143 ("Confidential Attorneys' Eyes Only")	Email dated 07/05/2005, between Fabian Tenenbaum, Colleen Canaday (former Radiancy Marketing Manager) and others, [REDACTED]
[51]	RAD0171821 RAD0171822 ("Confidential Attorneys' Eyes Only")	Email dated 10/09/06, from Dolev Rafaeli to Moran Tabak, Radiancy Vice President of Sales and Consumer Products, [REDACTED]
[52]	RAD0171733 ("Confidential Attorneys' Eyes Only")	Email dated 09/11/06, between Dolev Rafaeli and Jeffrey Mishan and others at Emson USA, [REDACTED]

Exhibit No.	Bates No.	Description
[53]	RAD0117084 ("Confidential Attorneys' Eyes Only")	Email dated 09/11/06, from Eddie Mishan (of Emson USA) to Dolev Rafaeli. [REDACTED]
[54]	RAD0116626 ("Confidential Attorneys' Eyes Only")	Email dated 07/12/07, from Dolev Rafaeli to Sharon Dovev. [REDACTED]
[55]	RAD0079858 ("Confidential Attorneys' Eyes Only")	Email dated 08/26/2007, from Sharon Dovev to Alyssa Kobel at Sephora (copying Dolev Rafaeli and others). [REDACTED]
[56]	RAD0079962 ("Confidential Attorneys' Eyes Only")	Email dated 02/26/2008, which includes an email dated 02/26/2008, from Andrea Knight at HSN to Skip Borghese, Radiancy consultant for HSN advertising. [REDACTED]
[57]	RAD0079981 ("Confidential Attorneys' Eyes Only")	Email dated 03/04/2008, which includes an email dated 02/06/2008 from Natalie Lontchar at HSN to others at HSN. [REDACTED]
[58]	RAD0029894 ("Confidential Attorneys' Eyes Only")	Email dated 03/06/2008, from Sharon Dovev to Skip Borghese and Dolev Rafaeli. [REDACTED]



Exhibit No.	Bates No.	Description
[59]	RAD0174015 ("Confidential Attorneys' Eyes Only")	Email dated 6/26/08, from Sharon Dovev and Dolev Rafaeli, [REDACTED]
[60]	RAD0050392 RAD0050394 ("Confidential Attorneys' Eyes Only")	Email dated 10/10/2008, which includes email dated 09/25/2008, from Steven Seiferheld at HSN to others, [REDACTED]
[61]	RAD0050423 ("Confidential Attorneys' Eyes Only")	Email dated 12/24/08, which includes an email from 12/23/08, from Dolev Rafaeli to Sharon Dovev, [REDACTED]
[62]	RAD0021763 RAD0021765 ("Confidential Attorneys' Eyes Only")	Email dated 01/13/09, from Moran Tabak to Dolev Rafaeli, [REDACTED]
[63]	RAD0021768 RAD0021769 ("Confidential Attorneys' Eyes Only")	Email dated 1/14/09, from Moran Tabak to Dolev Rafaeli, [REDACTED]
[64]	RAD0175133 RAD0175135 ("Confidential Attorneys' Eyes Only")	Email dated 02/06/09, from Moran Tabak to Dolev Rafaeli and others, [REDACTED]
[65]	RAD0197000 ("Confidential Attorneys' Eyes Only")	Email dated 06/22/09, from Sharon Dovev to Dolev Rafaeli, [REDACTED]
[66]	RAD0031401 ("Confidential Attorneys' Eyes Only")	Email dated 09/18/2009 between Sharon Dovev, Skip Borghese, Jon Schulberg and Dolev Rafaeli [REDACTED]
[67]	RAD0061205 ("Confidential Attorneys' Eyes Only")	Email dated 01/24/10, from Sharon Dovev to Jon Schulberg, [REDACTED]

Exhibit No.	Bates No.	Description
[68]	RAD0061284 ("Confidential Attorneys' Eyes Only")	Email dated 02/02/10, between Dolev Rafaeli and Sharon Dovev [REDACTED]
[69]	RAD0052634 ("Confidential Attorneys' Eyes Only")	Email dated 02/03/10, from Jon Schulberg to Sharon Dovev, copying Dolev Rafaeli and others. [REDACTED]
[70]	RAD0052652 ("Confidential Attorneys' Eyes Only")	Email dated 02/03/10 between Dovev, Rafaeli, Schulberg and others. [REDACTED]
[71]	RAD0061338 ("Confidential Attorneys' Eyes Only")	Email dated 02/10/2010, between Rafaeli, Borghese, Schulberg, and others regarding infomercial.
[72]	RAD0062278 ("Confidential Attorneys' Eyes Only")	Email dated 07/08/2010, from Dolev Rafaeli to Skip Borghese [REDACTED]
[73]	RAD0054674 ("Confidential Attorneys' Eyes Only")	Email dated 09/26/10, from Dovev to Schulberg discussing the no!no! hair infomercial.
[74]	RAD0180655 RAD0180656 RAD0180657 ("Confidential Attorneys' Eyes Only")	Email dated 11/1/10, from Dovev to Rafaeli, re: no!no! hair Skymall ad. [REDACTED]
[75]	RAD0059320 ("Confidential Attorneys' Eyes Only")	Email dated 01/12/11, from Greg Sorensen (Sun Trust) to Rafaeli, [REDACTED]


Exhibit No.	Bates No.	Description
[76]	RAD0045055 ("Confidential Attorneys' Eyes Only")	Power point presentation, dated 01/19/11 [REDACTED]
[77]	RAD0110465 ("Confidential Attorneys' Eyes Only")	Email dated 01/27/11, from Jaimee Given to several Radiancy employees [REDACTED]
[78]	RAD0112029 ("Confidential Attorneys' Eyes Only")	Email dated 02/27/11, that includes an email dated 02/28/11, from Dolev Rafaeli to Samantha Kohl. [REDACTED]
[79]	RAD0193491 RAD0193492 ("Confidential Attorneys' Eyes Only")	Email dated 03/03/11, from Idan Zuta, Radiancy Project Manager, to Philip Solomon [REDACTED]
[80]	RAD0115444 ("Confidential Attorneys' Eyes Only")	Email dated 07/11/11, from Chubi Aharons to Sharon Dovev, [REDACTED]
[81]	RAD0103003 ("Confidential Attorneys' Eyes Only")	Email dated 7/28/11, from Aharons to Given, Kohl, Dovev, and others [REDACTED]
[82]	RAD0203409 ("Confidential Attorneys' Eyes Only")	Email dated 07/31/11, between Aharons, Given, Kohl et al [REDACTED]
[83]	RAD0127116 RAD0127118 ("Confidential Attorneys' Eyes Only")	Email dated 07/27/10, from Dolev Rafaeli to Giora Fishman, [REDACTED]
[84]	RAD0027177 RAD0027220 ("Confidential Attorneys' Eyes Only")	Two sets of completed no!no! Written Surveys, [REDACTED]
[85]	RAD0038889 ("Confidential Attorneys' Eyes Only")	Excel Spreadsheet [REDACTED]

Exhibit No.	Bates No.	Description
[86]	RAD0015817 RAD0015818 ("Confidential Attorneys' Eyes Only")	Email dated 01/13/09 from Dolev Rafaeli to Skip Borghese and others. [REDACTED]
[87]	RAD0034411 RAD0034416 ("Confidential Attorneys' Eyes Only")	Email dated 06/01/10 from Sharon Dovev to Samantha Kohl and others. [REDACTED]
[88]	TBI-00399197 ("Attorneys' Eyes Only Pursuant to Protective Order")	Email dated 06/16/2010, from Kevin Appelbaum to Eric Meyer, in which Appelbaum, TRIA's CEO, states. [REDACTED]
[89]	TBI-00402957 ("Attorneys' Eyes Only Pursuant to Protective Order")	Email dated 09/11/10, from Sridhar Nallani to Kevin Appelbaum, [REDACTED]
[90]	TBI-00366565 ("Attorneys' Eyes Only Pursuant to Protective Order")	Email dated 10/11/2010, which includes an email dated 10/09/2010, from Kevin Appelbaum to TRIA employees. [REDACTED]
[91]	TBI-00402624 ("Attorneys' Eyes Only Pursuant to Protective Order")	Email dated 10/18/2010 from Kevin Appelbaum to Jim Glasheen, [REDACTED]
[92]	TBI-00042302 ("Attorneys' Eyes Only Pursuant to Protective Order")	Client Satisfaction Monitor, June 2010 Results: "Clients who purchased the TRIA Laser Hair Removal System ('TLHRS') from December 2009 until May 2010 received an email invitation to participate in a survey and 1,084 surveys were completed."
[93]	TBI-00156834 ("Attorneys' Eyes Only Pursuant to Protective Order")	Report entitled "U.S. LHRS Target Consumer Learnings," summarizing "key [TRIA] Laser Hair Removal System (LHRS) consumer learnings from the Client Satisfaction Monitor" and other sources.

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Exhibit No.	Bates No.	Description
[94]	TBI-00478546 ("Attorneys' Eyes Only Pursuant to Protective Order")	Email dated 10/19/10 from Eric Meyer to Kevin Appelbaum, which includes an email from Rachel Read at M2 Marketing to 

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on May 24, 2012 at Washington, D.C.

/s/ Mariel Goetz

Mariel Goetz  
ROPES & GRAY LLP